

AMENDED IN ASSEMBLY APRIL 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 423

Introduced by Assembly Member Longville

February 14, 2003

An act to amend Section 320.5 of the Penal Code, relating to gaming.

LEGISLATIVE COUNSEL'S DIGEST

AB 423, as amended, Longville. Charitable raffles.

The California Constitution authorizes the Legislature to permit private, nonprofit organizations to conduct raffles as a funding mechanism to support charitable works, if, among other conditions, at least 90% of the gross receipts from the raffle go directly to beneficial or charitable purposes in California. The California Constitution further authorizes the Legislature to amend the percentage of gross receipts required to be dedicated to beneficial or charitable purposes by a statute passed by a ²/₃ vote of each house of the Legislature and signed by the Governor.

This bill would ~~declare the Legislature's intent to enact legislation amending~~ decrease the percentage of gross receipts from charitable raffles required to go to charitable purposes, ~~in order to reflect similar distribution percentages as those required for California State Lottery funds~~ from 90% to 50%. The bill would additionally require that no more than 10% of gross receipts from charitable raffles be used for administrative costs for operating a raffle, and would also make technical, nonsubstantive changes to those provisions.

Because the bill would revise the percentage of gross receipts required to go to beneficial or charitable purposes, pursuant to the

California Constitution the bill would require a $\frac{2}{3}$ vote of each house and signature by the Governor.

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~It is the intent of the Legislature to enact Section~~
2 320.5 of the Penal Code is amended to read:
3 320.5. (a) Nothing in this chapter applies to any raffle
4 conducted by an eligible organization as defined in subdivision (c)
5 for the purpose of directly supporting beneficial or charitable
6 purposes or financially supporting another private, nonprofit,
7 eligible organization that performs beneficial or charitable
8 purposes if the raffle is conducted in accordance with this section.
9 (b) For purposes of this section, “raffle” means a scheme for
10 the distribution of prizes by chance among persons who have paid
11 money for paper tickets that provide the opportunity to win these
12 prizes, where all of the following are true:
13 (1) Each ticket is sold with a detachable coupon or stub, and
14 both the ticket and its associated coupon or stub are marked with
15 a unique and matching identifier.
16 (2) Winners of the prizes are determined by draw from among
17 the coupons or stubs described in paragraph (1) that have been
18 detached from all tickets sold for entry in the draw.
19 (3) The draw is conducted in California under the supervision
20 of a natural person who is 18 years of age or older.
21 (4) (A) At least ~~90~~ 50 percent of the gross receipts generated
22 from the sale of raffle tickets for any given draw are used by the
23 eligible organization conducting the raffle to benefit or provide
24 support for beneficial or charitable purposes, or it may use those
25 revenues to benefit another private, nonprofit organization,
26 provided that an organization receiving these funds is itself an
27 eligible organization as defined in subdivision (c). As used in this
28 section, “beneficial purposes” excludes purposes that are
29 intended to benefit officers, directors, or members, as defined by
30 Section 5056 of the Corporations Code, of the eligible
31 organization. In no event shall funds raised by raffles conducted
32 pursuant to this section be used to fund any beneficial, charitable,
33 or other purpose outside of California. This section does not

1 preclude an eligible organization from using funds from sources
2 other than the sale of raffle tickets to pay for the administration or
3 other costs of conducting a raffle.

4 (B) *No more than 10 percent of the gross receipts generated*
5 *from the sale of raffle tickets from any given draw may be used for*
6 *administrative costs and other costs incurred in the operation of*
7 *raffles.*

8 (C) An employee of an eligible organization who is a direct
9 seller of raffle tickets ~~shall~~ *may* not be treated as an employee for
10 purposes of workers' compensation under Section 3351 of the
11 Labor Code if the following conditions are satisfied:

12 (i) Substantially all of the remuneration (whether or not paid in
13 cash) for the performance of the service of selling raffle tickets is
14 directly related to sales rather than to the number of hours worked.

15 (ii) The services performed by the person are performed
16 pursuant to a written contract between the seller and the eligible
17 organization and the contract provides that the person will not be
18 treated as an employee with respect to the selling of raffle tickets
19 for workers' compensation purposes.

20 ~~(C)~~

21 (D) For purposes of this section, employees selling raffle
22 tickets shall be deemed to be direct sellers as described in Section
23 650 of the Unemployment Insurance Code as long as they meet the
24 requirements of that section.

25 (c) For purposes of this section, "eligible organization" means
26 a private, nonprofit organization that has been qualified to conduct
27 business in California for at least one year prior to conducting a
28 raffle and is exempt from taxation pursuant to Sections 23701a,
29 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l,
30 23701t, or 23701w of the Revenue and Taxation Code.

31 (d) Any person who receives compensation in connection with
32 the operation of the raffle shall be an employee of the eligible
33 organization that is conducting the raffle, and in no event may
34 compensation be paid from revenues required to be dedicated to
35 beneficial or charitable purposes.

36 (e) No raffle otherwise permitted under this section may be
37 conducted by means of, or otherwise utilize, any gaming machine,
38 apparatus, or device, whether or not that machine, apparatus, or
39 device meets the definition of slot machine contained in Section
40 330a, 330b, or 330.1.

1 (f) No raffle otherwise permitted under this section may be
2 conducted, nor may tickets for a raffle be sold, within an operating
3 satellite wagering facility or racetrack inclosure licensed pursuant
4 to the Horse Racing Law (Chapter 4 (commencing with Section
5 19400) of Division 8 of the Business and Professions Code) or
6 within a gambling establishment licensed pursuant to the
7 Gambling Control Act (Chapter 5 (commencing with Section
8 19800) of Division 8 of the Business and Professions Code). A
9 raffle may not be advertised, operated, or conducted in any manner
10 over the Internet, nor may raffle tickets be sold, traded, or
11 redeemed over the Internet. For purposes of this section,
12 advertisement ~~shall~~ *may* not be defined to include the
13 announcement of a raffle on the Web site of the organization
14 responsible for conducting the raffle.

15 (g) No individual, corporation, partnership, or other legal
16 entity shall hold a financial interest in the conduct of a raffle,
17 except the eligible organization that is itself authorized to conduct
18 that raffle, and any private, nonprofit, eligible organizations
19 receiving financial support from that charitable organization
20 pursuant to subdivisions (a) and (b).

21 (h) (1) An eligible organization may not conduct a raffle
22 authorized under this section, unless it registers annually with the
23 Department of Justice. The department shall furnish a registration
24 form via the Internet or upon request to eligible nonprofit
25 organizations. The department shall, by regulation, collect only
26 the information necessary to carry out the provisions of this section
27 on this form. This information shall include, but is not limited to,
28 the following:

29 (A) The name and address of the eligible organization.

30 (B) The federal tax identification number, the corporate
31 number issued by the Secretary of State, the organization number
32 issued by the Franchise Tax Board, or the California charitable
33 trust identification number of the eligible organization.

34 (C) The name and title of a responsible fiduciary of the
35 organization.

36 (2) The department may require an eligible organization to pay
37 an annual registration fee of ten dollars (\$10) to cover the actual
38 costs of the department to administer and enforce this section. The
39 department may, by regulation, adjust the annual registration fee
40 as needed to ensure that revenues willfully offset, but do not

1 exceed, the actual costs incurred by the department pursuant to this
2 section. The fee shall be deposited by the department into the
3 General Fund.

4 (3) The department shall receive General Fund moneys for the
5 costs incurred pursuant to this section subject to an appropriation
6 by the Legislature.

7 (4) The department shall adopt regulations necessary to
8 effectuate this section, including emergency regulations, pursuant
9 to the Administrative Procedure Act (Chapter 3.5 (commencing
10 with Section 11340) of Part 1 of Division 3 of Title 2 of the
11 Government Code).

12 (5) The department shall maintain an automated data base of all
13 registrants. Each local law enforcement agency shall notify the
14 department of any arrests or investigation that may result in an
15 administrative or criminal action against a registrant. The
16 department may audit the records and other documents of a
17 registrant to ensure compliance with this section.

18 (6) Once registered, an eligible organization must file annually
19 thereafter with the department a report that includes the following:

20 (A) The aggregate gross receipts from the operation of raffles.

21 (B) The aggregate direct costs incurred by the eligible
22 organization from the operation of raffles.

23 (C) The charitable or beneficial purposes for which proceeds of
24 the raffles were used, or identify the eligible recipient organization
25 to which proceeds were directed, and the amount of those
26 proceeds.

27 (7) The department shall annually furnish to registrants a form
28 to collect this information.

29 (8) The registration and reporting provisions of this section do
30 not apply to any religious corporation sole or other religious
31 corporation or organization that holds property for religious
32 purposes, to a cemetery corporation regulated under Chapter 19 of
33 Division 3 of the Business and Professions Code, or to any
34 committee as defined in Section 82013 that is required to and does
35 file any statement pursuant to the provisions of Article 2
36 (commencing with Section 84200) of Chapter 4 of Title 9, or to a
37 charitable corporation organized and operated primarily as a
38 religious organization, educational institution, hospital, or a health
39 care service plan licensed pursuant to Section 1349 of the Health
40 and Safety Code.

(i) The department may take legal action against a registrant if it determines that the registrant has violated this section or any regulation adopted pursuant to this section, or that the registrant has engaged in any conduct that is not in the best interests of the public's health, safety, or general welfare. Any action taken pursuant to this subdivision does not prohibit the commencement of an administrative or criminal action by the Attorney General, a district attorney, city attorney, or county counsel.

(j) Each action and hearing conducted to deny, revoke, or suspend a registry, or other administrative action taken against a registrant shall be conducted pursuant to the Administrative Procedure Act (Chapters 4.5 and 5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The department may seek recovery of the costs incurred in investigating or prosecuting an action against a registrant or applicant in accordance with those procedures specified in Section 125.3 of the Business and Professions Code. A proceeding conducted under this subdivision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(k) The Department of Justice shall conduct a study and report to the Legislature by December 31, 2003, on the impact of this section on raffle practices in California. Specifically, the study shall include, but not be limited to, information on whether the number of raffles has increased, the amount of money raised through raffles and whether this amount has increased, whether there are consumer complaints, and whether there is increased fraud in the operation of raffles.

(l) This section shall become operative on July 1, 2001.

(m) A raffle shall be exempt from this section if it satisfies all of the following requirements:

(1) It involves a general and indiscriminate distributing of the tickets.

(2) The tickets are offered on the same terms and conditions as the tickets for which a donation is given.

(3) The scheme does not require any of the participants to pay for a chance to win.

~~legislation amending the percentage of gross receipts from charitable raffles required to go directly to beneficial or charitable~~

- 1 ~~purposes in California, in order to reflect similar distribution~~
- 2 ~~percentages as those required for California State Lottery funds.~~

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